APPENDIX A

APPENDIX A
IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-1974
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

SUSAN JILL FORBICETTA,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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(September 19, 1973)

Before GEWIN, COLEMAN and MORGAN, Circuit Judges.

COLEMAN, Circuit Judge: In a Bench trial, Miss Forbicetta was convicted of the knowing, intentional, and unlawful importation of cocaine in violation of 21 U.S.C., §1952(a), and of the knowing, intentional, and

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*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

unlawful possession with intent to distribute cocaine in violation of 21 U.S.C., §841(a)(1).

It could not have been denied that on November 21, 1972 the appellant arrived at Miami International Airport on a flight from Bogota, Colombia, carrying, while concealed on her person, 2 1/2 pounds of cocaine. An attack upon the validity of the search which discovered the cocaine provided the only hope of avoiding a conviction. The search was found valid, we agree, and the convictions are affirmed.

This was a border search, accomplished at the very time the appellant was entering the United States from abroad. The evidence reflected that according to the experience of customs officials at Miami, a high percentage of the individuals discovered in the act of attempting to smuggle cocaine at the Miami International Airport arrived on flights from Bogota; the American women discovered in this activity were usually young, clean looking, and traveling alone; women discovered carrying cocaine on their persons usually wore loose-fitting dresses to conceal the bulkiness of the packages hidden beneath their clothing; usually when an official could not see the contours of a feminine figure under loose-fitting dresses, even when the subject was in a bending position, the wearer generally had something strapped to her waist; individuals attempting to smuggle cocaine usually carried only one suitcase and no items to declare so as to clear customs quickly; it had been observed that it was very unusual for young people to go on vacations to Colombia if they had no relatives there; and the usual air-

line female traveler ordinarily wore tight-fitting clothes.

In this context Miss Forbicetta arrived from Colombia, traveling alone, with one suitcase, and no liquor or other items requiring customs inspection. She was young (age 21), thin, clean looking, and attractive. She was wearing a loose-fitting dress. When she bent to pick up her suitcase, the dress revealed no contours of her figure.

The customs official then questioned Miss Forbicetta. Her passport revealed that she was from Brooklyn. She said that she had been a bank teller, was unemployed, had gone to Colombia for a vacation, and had no relatives in Colombia.

She was then referred to two female customs inspectors. They, in the presence of none others, in a room which had no windows, asked the appellant to remove her dress and slip. The customs inspectors then could easily see that something was concealed under the remaining girdle. Upon removal of that garment, there appeared seven large packets, containing the 2 1/2 pounds of cocaine.

Under an abundance of precedent, this was a lawful border search, *United States v. Thompson*, 5 Cir., 1973, 475 F.2d 1359; *United States v. Skipwith* [No. 72-1932, slip opinion dated June 14, 1973], 5 Cir., 1973, ____ F.2d ____; *United States v. Cyzewski* [No. 72-3368, slip opinion dated August 29, 1973], 5 Cir., 1973, ____ F.2d ____; *United States v. Maggard*, 5 Cir., 1971, 451 F.2d 502;

United States v. Briones, 5 Cir., 1970, 423 F.2d 742; *United States v. Hill*, 5 Cir., 1970, 430 F.2d 129; *United States v. Rodriquez*, 5 Cir., 1961, 292 F.2d 709.

In *United States v. Skipwith, supra*, the defendant fell within the F.A.A. anti-skyjack profile and stated that he had no identification. A sky marshal detained him and found that the name on his airline ticket was false, took him to his office, and, fearing that a bulge in the defendant's pocket was a gun, had him to empty his pockets, revealing a plastic bag of cocaine. The search was held to be lawful.

In Miss Forbicetta's case, her appearance, method of travel, and response to questions met a "smuggling profile" born of experience gained in coping with that elusive activity. She was at the border, in the act of entering the Country. She was examined by other women in a dignified manner, in a place where there could be no peeping eyes, and there was no exploration of body cavities. This search was entirely reasonable.

The appellant complains of the alleged bias of the trial judge. Counsel did file a motion, 28 U.S.C., §144, that the Judge recuse himself, which was overruled. Despite this unfavorable ruling, jury trial was waived, after the defendant had been very meticulously assured of her right to trial by jury. It is easily seen that counsel adopted this course because the only hope for his client was the asserted illegality of the search. That was a question of law, not a question for a jury.

As an issue of law, and upon undisputed facts, the District Court has decided it correctly.

Nothing remains but for the Judgment of the District Court to be

AFFIRMED.

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APPENDIX B

APPENDIX B

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1972

No. 73-1974
Summary Calendar

D. C. Docket No. 72-929-CR-EC

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SUSAN JILL FORBICETTA,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

Before GEWIN, COLEMAN and MORGAN, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudg by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

September 19, 1973

Issued as Mandate:

APPENDIX C

APPENDIX C

IN THE

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 73-1974

SUSAN JILL FORBICETTA,

Appellant

versus

UNITED STATES OF AMERICA,

Appellee

Appeal from the United States District Court
for the Southern District of Florida

PETITION FOR REHEARING
(EN BANC)

JACK FREED
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Miami, Florida 33139

Attorney for Appellant

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 73-1974

SUSAN JILL FORBICETTA,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida

PETITION FOR REHEARING

IN THE INTEREST OF JUSTICE and adherence to the law of the United States of America, Appellant, SUSAN JILL FORBICETTA, by and through her undersigned attorney, respectfully petions this Court for a REHEARING IN BANC, of its decision in this cause and as grounds states:

1. That these proceedings involves questions of exceptional importance.

2. That consideration of the full Court is necessary to maintain uniformity of decisions within this and other UNITED STATES COURTS OF APPEALS and the UNITED STATES SUPREME COURT.

The questions presented in this cause are of exceptional

importance not only because this defendant's Constitutional rights have been openly disregarded in the sole interests of a conviction, but due primarily to the fact that should this decision be permitted to stand in its open conflict and disregard of the Constitution and supporting case law, the Fourth Amendment has,in effect, been rendered null and void.

The reviewing panel in this cause did not address themselves to the questions, the facts or the law in this cause. In their opinion affirming this warrantless strip search the panel cites several recent cases as "an abundance of precedent." These recent cases are of an entirely different nature involving serious and immenent danger to life and property of air travelers by the skyjackers and/or potential skyjackers. Such is not the case in this cause, as no danger, serious or incidental, real or suspected, to life or property was imminent to justify this warrantless strip search.Further, the decision rendered in this cause is in clear and direct conflict with recent decisions on this subject, United States v.Poindexter, 429 F.2d510(1970); United States v. Johnson, 425 F.2d630 (1970); rehearing denied June 22,1970,Henderson v. United States,390 F.2d 805,808 (1967); United States v.Guadalupe-Garza, 421 F.2d 876 (1970); United States v.Gilda Avila, 468 F.2d 184 (1972), United States v. Shields 453 F.2d 1235 (1972), to cite but a few.

The reviewing panel further takes little note of the trial judges open bias to the Defendant and her counsel in denying this Defendant a fair and impartial trial before a fair and impartial judge.Defendant was badgered and threatened by the trial judge during the hearing on Defendant's Motion to Suppress.

Defense counsel exhibited the utmost respect to the court and the judge at all times. The Judge, nonetheless continually badgered counsel, assumed the role of the prosecutor, called counsel a liar, told him he was unfit to practice law, held him in contempt, fined him $100.00 and he was removed by the Marshall to the Marshall's holding area. Clearly unjustified bias which has no place in law or in the dignity of our judicial system.

Furthermore the panel, for whatever reason, apparently places great weight on the waiving of jury by Defendant. Defendant and counsel had no choice but to waive jury trial, as a written stipulation had been entered into and signed by the government, Defendant and defense counsel. (Copy of which is available to this Court) which was honored by the Defendant, but dishonored by the Government. It was during defense counsel attempted proffer to the court of this written stipulation where counsel was held in contempt, called a liar, fined $100.00 and removed by the Marshall. The United States Supreme Court in Santobello v. New York 404 U.S. 257, has expressly held that plea bargaining must be honored by both parties or require that the judgment be vacated.

It is respectfully submitted that the opinion and decision in this cause is not only in direct conflict with the law for it is not the law, hasnever been the law and God forbid should it ever become the law of this great Republic.

Furthermore, for this court of appeals to permit a district court to unjustly treat a citizen and an attorney, (who is an officer of the court) in the manner which they were subjected in this cause

is beyond the law or legal reasoning in establishing that the end, (a conviction), justifies the means, for an illegal warrantless strip search. (Appellants brief sets forth some of the legal authority concerning this cause.)

WHEREFORE, the Court should reconsider its opinion and decision, grant a rehearing En Banc, and reverse the judgment below.

Respectfully submitted,

JACK FREED
Attorney for Appellant
1390 S. Venetian Way
Miami, Florida 33149
305/379-3647

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of October, 1973, two true and correct copies of the foregoing Petition for Rehearing was hand delivered to the United States Attorney for the Southern District of Florida, Ainsley Building, Miami, Florida 33132.

JACK FREED

APPENDIX D

APPENDIX D

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 73-1974

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

SUSAN JILL FORBICETTA,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

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ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion Sept. 19, 1973, 5 Cir., 1973, ____ F.2d ____).

(November 2, 1973)

Before GEWIN, COLEMAN and MORGAN, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35

Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX E

APPENDIX E

[illegible]

No. 73-

[illegible]

versus

UNITED STATES OF AMERICA,

Appellee

MOTION TO STAY MANDATE

[illegible]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 76-[illegible]

[illegible] NAOMI FONSECA,

Appellant,

vs.

UNITED STATES OF AMERICA

Appellee

MOTION TO STAY MANDATE

COMES NOW the Defendant, SUSAN GILL FONSECA, by and through her undersigned attorney, ERICK FRUMP, and moves this Honorable Court to grant this Motion To Stay Mandate and as the grounds therefore says as follows:

1. That a substantial question is to be presented to the Supreme Court in that there is a clear conflict between this Court of Appeals and the United States Court of Appeals for the Ninth Circuit.

The instant case involved a "strip search" at an international border.

The United States Court of Appeals for the Ninth Circuit has clearly and concisely set forth the standards for "strip searches" at an international border, in the following line of cases:

[illegible] v. [illegible], [illegible] F.2d [illegible] (1973) [illegible]
[illegible], [illegible] F.2d [illegible] [illegible] v. [illegible]
[illegible] (1970), [illegible] 22, 1973 [illegible]
S. Ct. 2244, Certiorari was denied 42 U.S.L.W. 3511 [illegible] v.
[illegible], 455 F.2d 1255 (1972) and Fulton Bonner v. [illegible]
F.2d 184 (1972). The decision in the [illegible] cases [illegible]
direct conflict with the decision rendered in the instant case.

The authority cited for the decision in the instant case, [illegible] two anti-hi-jacking cases concerning domestic air travel, has nothing whatsoever to do with "strip searches" of an intestinal nature.

Due to this direct conflict, between different United States Courts of Appeals, this substantial question is to be presented to the Supreme Court. Therefore, it is requested that the Defendant be allowed to remain on the present bond pending determination by the United States Supreme Court.

2. In addition to the foregoing, the United States Supreme Court, in Santabello v. New York, 404 U.S. 257 (1971), at page 267, said as follows:

> "Where the 'plea bargain' is not kept by the prosecutor, the sentence must be vacated..." (emphasis added)

The prosecutor, in the instant case, did not honor a written agreement with the Defendant, which is contrary to [illegible] Santabello, and it is requested that this Defendant be allowed to remain on the present bond pending disposition by the Supreme Court.

[illegible] the defendant respectfully [illegible] honorable Court to grant this Motion to Stay Mandate pending [illegible] tion by the United States Supreme Court.

Respectfully submitted,

[illegible]
[illegible]
[illegible]
[illegible]
305/[illegible]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the [illegible] day of [illegible], 1974, two true and correct copies of the foregoing Motion to Stay Mandate was hand delivered to the United States Attorney for the Southern District of Florida, Ainsley Building, Miami, Florida, 33132.

JACK [illegible]

APPENDIX F

U.S. COURT OF APPEALS
FILED
NOV 15 '73
EDWARD W. WADSWORTH
CLERK

APPENDIX F
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
SUSAN JILL FORBICETTA,
Defendant-Appellant.

NO. 73-1974

ON CONSIDERATION OF THE APPLICATION of the Appellant in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States. IT IS ORDERED that the issuance of the mandate of this Court in said cause be, and the same is stayed to and including December 2, 1973, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed. IT IS FURTHER ORDERED that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

UNITED STATES CIRCUIT JUDGE